

Security 5-1
FILE

24 JUN 1970

General Counsel

7-D-01 Headquarters

Larry:

Attached is my write-up of our agreements at the meeting on S. 782. I am sending copies to all other attendees and asking them when they would be ready for the next session to discuss our findings in general terms. Please let me know when you would be ready to speak to this subject.

SIGNED R. L. Bannerman

R. L. Bannerman

Deputy Director for Support

7-D-26 Headquarters



25X1

Form 241

DD/S:RLB:llc (23 June 1970)

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DD/S 70-2466: Memo for GC, DMS, D/S, D/P, D/F, IG & LC dtd 22 Jun 70
frm DD/S subj: Possible Implementing Action to S. 782.

24 JUN 1970

Director of Personnel

5-E-56 Headquarters

Bob:

Please note the write-up of our meeting on S. 782. Please advise as to when you would be ready to meet for a general discussion of your findings. At the next meeting we can sort out the principal actions that should be taken.

SIGNED R. L. Bannerman

R. L. Bannerman

Deputy Director for Support

7-D-26 Headquarters



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24 JUN 1970

Director of Finance

1212 Key

Les:

I am sorry we did not include you or your representative at this meeting but please note that there are several sections where the Office of Finance is involved along with the Offices of Personnel and Security. Please let me know when you would be ready to discuss in general terms your findings. At the next meeting we can sort out the principal actions that should be taken.

SIGNED R. L. Bannerman

R. L. Bannerman

Deputy Director for Support

7-D-26 Headquarters



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24 JUN 1970

Inspector General

2-E-24 Headquarters

Gordon:

This was an exploratory meeting on S. 782. While we did not invite a representative from your office in this initial review, we did make a suggestion that involves your office at several points of consideration. I will set up a meeting in the next several weeks and would appreciate your representative attending with any comments that you may have.

SIGNED R. L. Bannerman

R. L. Bannerman

Deputy Director for Support

7-D-26 Headquarters

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Form 241

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24 JUN 1970

Legislative Counsel

7-D-43 Headquarters

Attached is a summary of the initial reviews to be taken on the subject of S. 782. I will call a meeting at a later date and would appreciate any comments your staff may have on this subject. This is predicated on the possibility that we may not get the exemption we hopefully are seeking.

SIGNED R. L. Bannerman

R. L. Bannerman

Deputy Director for Support

7-D-26 Headquarters

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frm DD/S subj: Possible Implementing Action on S. 782

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DD/S 70-2466

22 JUN 1970

MEMORANDUM FOR: General Counsel
Director of Medical Services
Director of Security
Director of Personnel
Director of Finance
Inspector General
Legislative Counsel

SUBJECT : Possible Implementing Action to S. 782

1. On 8 June 1970 a meeting was held in the Office of the DD/S to consider Agency action necessary to implement the provisions of S. 782 if passed by the Congress in its present form. Those attending were Messrs. Houston, Warner, Tietjen, Osborn, Wattles, Coffey, and the DD/S.

2. The following actions tied to the sections of S. 782 were agreed upon:

Section 1(a): Inquiries as to citizenship and national origin - OGC to explore a statement that inquiries of this nature are necessary to Agency security.

Section 1(b): That notice will be taken of attendance by employees at meetings, etc. - the Office of General Counsel, Office of Security and Office of Personnel will consider the substance of this section as regards Agency regulations, notices and practices with a view to noting changes that need to be effected in our regulations, procedures and practices, and also to prepare guidance for officers of the Agency vis-a-vis the provisions of this section.

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Section 1(c): Requiring an employee to participate in activities unless such are related to the performance of official duties, etc. - the Office of Personnel to review this section from the standpoint of existing regulatory issuances, the description of official duties and considering also certain overseas duty requirements. Guidance to Agency officers should be developed as regards this section.

Section 1(d): Requiring an employee to report activities, undertakings, etc. - the Offices of General Counsel, Security and Personnel to consider the impact of this section in the same manner as Section 1(b).

Section 1(e): Requiring any employee to submit to any interrogation or examination or take a psychological test, etc. and the exemption as specified in Section 6 of this Bill - the Office of General Counsel to prepare the necessary authorization by the Director of Central Intelligence to the Directors of Medical Services, Security, Personnel and Inspector General to serve as his designees with regard to the questioning or examination conducted relating to this section and Section 6.

Section 1(f): Polygraph examination - exemptions in Section 6 - Office of Security to prepare the necessary guidance for the conduct of polygraph examinations referred to in this section including guidance to examiners as to types of questions that may be asked.

Section 1(g): Require - Personal endeavor or contribution of money to election of any Government official - Office of Personnel to review this section against our regulatory and code of conduct issuances.

Section 1(h): Savings Bonds - Office of Personnel to review against our regulatory issuances, fund drive notices and fund campaign materials and our practices in the bond and fund raising campaign.

Section 1(i): Employee disclosure of property, income, etc. - Offices of Security, Personnel and Finance to review as against Agency regulations and practices, [redacted] and Allowance Committee procedures. Suggest any changes in regulations or practices and prepare guidance for employees.

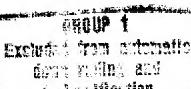
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Section 1(j): To require - disclosure of property, income, etc., other than indication of conflict of interest - the Offices of Security, Personnel and Finance to review existing regulatory and Agency notice requirements in this area and the "employee confidential statement of employment and financial interests" to determine whether any conflict exists and to produce guidance for both supervisors and employees.

Section 1(k): To require - any employee - under investigation for misconduct to submit to interrogation which could lead to disciplinary actions without the presence of counsel or other person of his choice -- action to the Office of General Counsel supported by the Offices of Security, Personnel, and Medical Services with a view to establishing guidance for all command line officials, supervisors, etc., who may deal in employee misconduct actions. Supporting regulatory procedures need be established for immediate action should such a case arise. (This section is the one which will give rise to most of the cases developing within the Agency and our procedures must be appropriately spelled out.)

Section 1(l): To discharge, discipline, etc., any employee -- by reason of refusal of employee to submit to any requirements made unlawful by S. 782 -- action to the Office of General Counsel to provide interpretation and guidance as to the applicability of this section. To remain free from any charged discrimination under this section, we may have to assure that all Agency actions pertaining to Personnel disciplinary measures, state the cause of the action in such a way that it does not fall within the provisions of this section.

Section 2: Applies to the Civil Service Commission - no Agency action.



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Section 3: Applies to the Armed Forces - no Agency action.

Section 4: No specific action need be taken on this section at this moment. However, appropriate guidance must be brought to the attention of all Agency command line officials of the implication of this section and the fact that the individual officer, rather than the Agency, is the one who is charged in the action before the U. S. District Court. Procedural guidance can later be developed on the applicability of this section.

Section 5: Board of Employee Rights - nothing to be done on this section at this time. If the Bill passes in its present form we must necessarily wait for the appointment of the Board and the development of its regulatory and procedural processes.

Section 6: CIA exemption re polygraph - psychological test, etc. -- necessary action to this section is covered in review of subsections of Section 1.

Section 7: Employee must first submit a written complaint to the Agency which must act upon the complaint within 120 days before the employee may invoke the provisions of Sections 4 and 5. It will be necessary to establish the procedural method by which complaints will be handled and to designate officials who will have responsibility for primary action under this section. Appropriate Agency regulations would have to be devised to carry out this procedure.

In the course of our discussion it was agreed that there should be a single officer in the Agency who would be responsible for the handling of complaints by employees or applicants arising under S. 782. In the processing of any complaints the designated officer would be able to call upon the Office of General Counsel, Office of Security, Office of Personnel, Office of Medical Services and any other component of the Agency for immediate action to provide reports, statements, etc., pertinent to any complaint. It was proposed that this officer be attached to the Inspector General rather than being located in any of the command line components of the Agency. His position would be analogous to that of the Equal Employment Opportunity Officer who oversees that program from an Agency standpoint and not from a component standpoint.

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Section 8: Disclosure of information - DCI authority -
no action at this time necessary concerning this subject.

Section 9: Not applicable to CIA.

Section 10: No action necessary at this time.

Section 11: No action at this time. If the Bill passes in
its present form the specific provisions of the Bill which are most
difficult from a legal standpoint to interpret will at some time
become the subject of a Federal District Court review at which
time the constitutionality or legality of that provision will be ruled
upon.

151

R. L. Bannerman
Deputy Director
for Support

DD/S:RLB:llc (22 June 1970)

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OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	DD/S	15 Jun 70	/S/
2	General Counsel	15 Jun 70	/S/
3			
4			
5			
6			
ACTION	DIRECT REPLY	PREPARE REPLY	
APPROVAL	DISPATCH	RECOMMENDATION	
COMMENT	FILE	RETURN	
CONCURRENCE	INFORMATION	SIGNATURE	

Remarks:

Attached is the report on the Ervin bill to be proposed to the Director. The report is identical to the draft in which you concurred on 12 and 11 June, respectively, except that (1) the last sentence of the first complete paragraph on the second page has been changed to accommodate the General Counsel's recommendation that the analysis be classified "Confidential," and (2) a two-page statement dealing specifically with personnel security and suitability has been added to the classified addendum.

I am also sending you a copy of the BOB transmittal letter and call your attention to the enclosure which traces, for information of BOB only, the major developments relating to S. 782.

If the package meets with your approval, please indicate by concurring.

STAT

FOLD HERE TO RETURN TO SENDER		
FROM: NAME, ADDRESS AND PHONE NO.		DATE
Legislative Counsel	7D35	6-15-70
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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

S. 782 (Ervin Bill)

FROM:

Legislative Counsel

NO.

STAT

DATE

TO: (Officer designation, room number, and building)	DATE		OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
	RECEIVED	FORWARDED		
1. Director				Attached is a report on the Ervin bill for your signature. The report requests a complete exemption from the bill for CIA and endorses such exemption for NSA and other components of the intelligence community as are requested. The report has the concurrence of the General Counsel and the DDS.
2.				Since Chairman Henderson, of the House Manpower and Civil Service Subcommittee, does not plan hearings, we have beefed up the report by two classified addenda which (1) analyzes those provisions of the bill which would cause us serious problems and (2) restates the reasons for the Agency's special responsibility to ensure the loyalty, security consciousness, integrity and psychological stability of its employees.
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John M. Maury
Legislative Counsel

The Honorable David N. Henderson, Chairman
Subcommittee on Manpower and Civil Service
Committee on Post Office and Civil Service
House of Representatives
Washington, D. C. 20515

My dear Mr. Chairman:

This is in response to your request for my views on S. 782, a bill to protect the civilian employees of the Executive Branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasion of their privacy.

I do not attempt to comment on the impact of S. 782 in general. My main concern is rather with its effect on the Central Intelligence Agency and the other agencies forming the intelligence community.

Certain provisions of S. 782 directly conflict with the statutory responsibilities of the Director of Central Intelligence for protecting intelligence sources and methods, and data relating to the organization of the Central Intelligence Agency. For example, the National Security Act of 1947 provides:

"... the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure; . . ."
(50 U.S.C. 403(d)),

and the Central Intelligence Agency Act of 1949, as amended, provides:

"In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 102(d)(3) of the National

Security Act of 1947 (Public Law 253, Eightieth Congress, first session) that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions. . . of any. . . law which require[s] the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency. . ." (50 U.S.C. 403g).

The adverse impact of S. 782 on the fundamental security interests of this Agency was developed in detail during my testimony before an executive session of your Subcommittee on 25 June 1968 in connection with S. 1035, an earlier version of S. 782. I am forwarding under separate cover certain classified material which restates our principal concerns.

S. 782 is an improvement over S. 1035 in several respects, but the adversary procedures which it authorizes pose the same critical problems inherent in S. 1035--the Agency must either remain silent in the face of unfounded allegations (with the alleged offending officer taking the consequences of the sanctions embodied in the bill), or it must divulge information which it is obligated by statute to protect, and disclosure of which might damage the national intelligence effort.

It is therefore my considered judgment that the Central Intelligence Agency requires a complete exemption from S. 782 such as section 9 of the bill provides for the Federal Bureau of Investigation. It is also my belief that S. 782 creates serious problems for certain other components of the intelligence community, such as the National Security Agency, and I trust that their views will receive favorable consideration.

I shall be happy to provide any additional information you may request.

The Bureau of the Budget has advised that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

Richard Helms
Director

Enclosure
(Under Separate Cover)

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Mr. Wilfred H. Rommel
Assistant Director for Legislative Reference
Bureau of the Budget
Washington, D. C. 20503

Dear Mr. Rommel:

Chairman Henderson, of the Subcommittee on Manpower and Civil Service, House Post Office and Civil Service Committee, has requested a report from this Agency on a bill, S.782, to protect the constitutional rights and privacy of Government employees.

Enclosed is a proposed report to the Subcommittee on S.782 and, for the information of the Bureau, a statement tracing the major developments involving this legislation over the last two Congresses. A classified addendum to the proposed report is being sent under separate cover.

Advice is requested as to whether the Bureau of the Budget has objections to the submission of this report.

Sincerely,

John M. Maury
Legislative Counsel

Enclosure

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MAJOR DEVELOPMENTS -- S. 782

90th Congress

Senate Committee: The predecessor bill, S.1035, was reported out of Senate Judiciary Committee on 21 August 1967 (S. Rpt. 534) with full exemption from the bill for the FBI and for the CIA and NSA a partial exemption from the prohibition relating to polygraph or psychological tests and financial statements upon a personal finding by the Director concerned that such information is required to protect national security.

Senate Floor: S. 1035 passed the Senate on 13 September 1967 with amendments which (1) deleted the complete exemption for the FBI and placed it in a similar category with CIA and NSA, and (2) authorized a designee of the Director involved to make the national security finding needed to invoke the partial exemption.

House Committee: S.1035 was referred to the Manpower and Civil Service Subcommittee of the House Post Office and Civil Service Committee, chaired by Representative David N. Henderson. The Director of Central Intelligence testified in executive session on S. 1035 and H. R. 17760, a substitute bill introduced by Chairman Henderson. The Director of Central Intelligence recommended a complete exemption from the bill for the CIA and other departments and agencies of the

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intelligence community, the same position set out in the letter to the Director of the Bureau of the Budget from the Director of Central Intelligence dated 12 October 1967. No further action was taken on either bill during the 90th Congress.

91st Congress

Senate Committee: The Director of Central Intelligence testified in executive session before the Constitutional Rights Subcommittee (chaired by Senator Ervin) of the Senate Judiciary Committee on S. 782 which was identical to S. 1035 as amended, and passed by the Senate during the 90th Congress, with specific exemptions from the provisions relating to polygraph, psychological testing and financial disclosures for CIA, NSA and the FBI. The Director of Central Intelligence restated the position that had been taken in connection with S. 1035: the need for a complete exemption. Senator Ervin opposed a complete exemption and eventually informally proposed several modifications on which he informally requested comments. These modifications were revised in keeping with some, but not all, comments made and were included as amendments in the bill as reported out on 15 May 1970 (S. Rpt. 873).

Senate Floor: S. 782 as amended was passed by the Senate on 19 May 1970, without discussion.

House Committee: S. 782 was referred to the House Post Office and Civil Service Committee on 20 May 1970 and Chairman Henderson of the Manpower and Civil Service Subcommittee requested the Agency's views.

NINETY-FIRST CONGRESS

70-36124

DAVID N. HENDERSON, N.C., CHAIRMAN
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ROBERT J. CORBETT, PA.

U.S. House of Representatives

SUBCOMMITTEE ON MANPOWER AND CIVIL SERVICE

OF THE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Washington, D.C. 20515

May 22, 1970

Mr. Richard Helms
Director, Central Intelligence
Agency
Washington, D.C. 20505

Dear Mr. Helms:

Senate bill S. 782, a bill to protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy, passed the Senate on May 19, 1970, and has been referred to the House Committee on Post Office and Civil Service, Subcommittee on Manpower and Civil Service.

The Subcommittee would appreciate receiving your views on this particular legislation.

With best wishes, I am

Sincerely yours,


David N. Henderson
Chairman